

Message Text

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ACTION OPIC-12

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FM AMEMBASSY MOGADISCIO

TO SECSTATE WASHDC IMMEDIATE 2090

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FOR OPIC FOR MRS. COLE

E.O. 11652: N/A

TAGS: EIND EFIN US SO

SUBJ: OPIC/PRODMA

REF: A. STATE 149039; B. MOGADISCIO 1065; C. STATE 141967

1. OPIC LAWYER MOHAMOUD SHEIKH AMED, IN CONVERSATIONS WITH EMBOFF JULY 13 AND 15, ADVISES THAT GSDR ANXIOUS TO CONCLUDE SALE OF PRODMA PLANT IMMEDIATELY, SPECIFICALLY BEFORE MINISTER OF FISHERIES LEAVES COUNTRY JULY 17 FOR TWO WEEKS OR SO, WITH JULY 16 HIS LAST DAY OF BUSINESS BEFORE TRIP. LAWYER ADVISES THAT OPIC AGREE TO SALE, ALTHOUGH THIS MEANS UNLINKING SALE FROM BUNKER CLAIM. CONSIDERING ALL ASPECTS, EMBASSY CONCURS WITH LAWYER'S JUDGEMENT AND, UNLESS WE RECEIVE CONTRARY INSTRUCTIONS, WE WILL TELL HIM MORNING OF JULY 16 THAT WE CONCUR HIS SIGNING AGREEMENT THAT AFTERNOON. DETAILS BELOW.

2. LAWYER REPORTS THAT ELECTRICAL ENGINEER'S VISIT TO PRODMA PLANT JULY 7 (REF B, PARA 1) WAS SUCCESSFUL, AND SOMALI AUTHORITIES CONSIDER MACHINERY IN ADEQUATE CONDITION FOR SALE.

3. EMBASSY APPRECIATES EXCELLENT THOUGHTS EMBODIED IN DRAFT LETTER SENT REF A, AS WELL AS HELPFUL FINANCIAL INSTRUCTIONS. EMBOFF DELIVERED DRAFT TO LAWYER, WHO THANKS MRS. COLE. LAWYER
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PLANS EXPRESS SAME THOUGHTS IN HIW OWN LANGUAGE WITH FOLLOW-

ING SUBSTANTIVE CHANGES OR ADDITIONS:

A. SPECIFIC REFERENCE TO GSDR RESPONSIBILITY FOR MACHINERY DURING INTERVAL OF USAGE BEFORE TITLE PASSES (REF A, PARA 3).

B. REFERENCE TO MACHINERY "AS IS", INDICATING NO WARRANTY OF CONDITION.

C. AT REQUEST OF MIN FISHERIES, STATEMENT THAT OPIC WILL SETTLE ALL FAIR AND REASONABLE EMPLOYEE CLAIMS ARISING UNDER SOMALI LAW FROM PERIOD BEFORE GSDR OCCUPANCY.

D. LAWYER BELIEVES GSDR WILL ACCEPT STRONGER LANGUAGE ON PAYMENT. INSTEAD OF "DELIVERY OF CHECK WITHIN 30 DAYS", PHRASE MIGHT BE "TRANSFER OF FUNDS IMMEDIATELY", MEANING CABLE NEXT DAY TO NEW YORK BANK HOLDING SOMALI ACCOUNT, TO AUTHORIZE TRANSFER OF FUNDS TO OPIC.

E. TITLE TO PASS AUTOMATICALLY "UPON TRANSFER OF FUNDS", WITHOUT FURTHER LEGAL DOCUMENTS. THIS WOULD AVOID POSSIBLE LARGE REGISTRATION FEES.

4. AFTER DISCUSSION WITH LAWYER OF ALL POINTS PARA 3 ABOVE, EMBASSY CONCURS IN HIS JUDGEMENT, AND HOPES SOMALIS WILL AGREE TO "IMMEDIATE" PAYMENT PROVISION, WITH 30 DAYS AS OUR FALLBACK POSITION.

5. LAWYER CONTINUES TO PRESS SOMALIS ON BUNKER CLAIM, AND STATES HE HAS HOPE OF POSITIVE RESULT. HOWEVER, HE ADVISES AGAINST SZUKING TO INCLUDE REFERENCE TO BUNKER IN PLANT SALE DOCUMENT, AS HE BELIEVES MIN FISHERIES WILL REFUSE TO SIGN SUCH REFERENCE AS BEING IRRELEVANT TO ITS CONCERN. EMBASSY PREPARED TO ACCEPT LAWYER'S JUDGEMENT.

6. PROCEDURALLY, EMBASSY UNDERSTANDS (REF B, PARA 2) THAT LEGAL AUTHORITY TO SELL RUNS FROM OPIC TO OPIC'S LAWYER. WE INTERPRET REF C, PARA 5, AND DRAFT LETTER REF A, TO INDICATE OPIC'S INTENTION TO AUTHORIZE SALE, PROVIDED EMBASSY CONCURS WITH SUBSTANCE OF NEGOTIATIONS, WHICH WE DO.

7. THEREFORE, UNLESS WE RECEIVE INSTRUCTIONS TO CONTRARY WE WILL TELL LAWYER MORNING JULY 16 THAT WE CONCUR IN HIS SIGNING AGREEMENT AFTERNOON JULY 16 ALONG LINES DESCRIBED ABOVE. WE BELIEVE THAT CRUCIAL ISSUE OF GSDR MAKING ACTUAL PAYMENT IS MORE A MATTER OF POLITICAL DECISION THAN OF LEGAL LANGUAGE.
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UNLINKING BUNKER CLAIM IS NOT IDEAL SOLUTION FROM OUR POINT OF VIEW, BUT NEVERTHELESS IT SEEMS WISEST AT THIS STAGE NOT TO JEOPARDIZE APPARENT GSDR WILLINGNESS TO PAY FOR PLANT IN NEAR FUTURE, AND TO HOPE FOR BEST ON BUNKER CLAIM.
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